

**Village of Irvington
Zoning Board of Appeals**

Minutes of Meeting held September 25, 2001

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M. on Tuesday, September 25, 2001, in the former village library, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman
Robert L. Bronnes
George Rowe, Jr.
Bruce E. Clark
Paul M. Giddins
Brian Barrett

Mr. Lustenberger acted as Chairman and Mr. Giddins as Secretary of the meeting.

There were five matters on the agenda:

Case No.

2001-08 Ramai Narayan – 3 Beechwood Road (Sheet 13; Lot P5)

This was a continued matter that had been before the Board on August 21, 2001.

Mr. Giddins acted as an alternate and did not vote on this matter.

The Applicant appeared with Gerald Loehr, Esq.

The Applicant did not file with the Board the verified statement of compliance with the notice provisions of § 224-98(A) of the Irvington Zoning Code ("the Code"). However, Applicant stated that the required notifications were made in the requisite manner and that the proofs thereof were filed directly with the Village Clerk.

The Applicant appeared before this Board on an appeal from a decision of the Irvington Architectural Review Board ("ARB"). The Chairman noted that on June 21, 2000, this Board previously granted the Applicant a variance from the provisions of § 243-51-B(2) (now §224-51(B)(2) of the Code, to permit the continuation of an existing fence to the rear of Applicant's house and within the Broadway Buffer. After obtaining the variance from this Board, the applicant sought approval for the fence from the ARB, which denied the application, finding the fence "not aesthetically pleasing or in harmony with the major thoroughfare through the Village." The appeal to this Board followed.

There was no opposition to the application.

The Chairman noted that he had visited the property. The Applicant stated, and the Board concurred, that the fence is partially screened from Broadway by existing trees and stands behind an already existing stone wall within the Broadway Buffer. The Applicant also stated that the fence is needed to prevent trespassing on his property.

After discussion, the Board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board further concluded that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, and that the benefit sought could not feasibly be achieved by any method other than a variance. The Board also concluded that the requested variance would not adversely affect the physical or environmental conditions of the neighborhood or district, and that the hardship necessitating the request for the variance was not self-created.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to overrule the ARB's decision, to reaffirm this Board's earlier decision granting the variance to continue the existing fence, and to permit the continuation of the existing fence.

Case No.

2001-10 **Eric and Beatrice Goldsmith** – 73 Havermeyer Road (Sheet 12A; Lots P91D, P91C, P91H2, P91J, P91K2)

Mr. Barrett acted as an alternate and did not vote on this matter.

Applicant Eric Goldsmith appeared with his architect Michael Esmay.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Irvington Zoning Code ("the Code"), the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of § 224-11 (front yard set back) of the Code, to permit the construction of an addition to the front of Applicant's residence.

The Board reviewed plans submitted by the Applicant. The Chairman noted that he had visited the property and that the lot is unique in its configuration. The portion of the house to which the Applicant proposes to add the addition faces a common driveway. The Chairman noted that Planning Board has found this to be a street for purposes of site planning, making the subject property a corner lot that fronts on the driveway, rather than on Havermeyer Road itself. Making that side of the house the front, imposes upon it the 50 foot setback requirement for front yards, rather than the 25 feet required for what would be a side yard, were the residence facing Havermeyer Road.

It was noted by the Board that while the foregoing circumstances do not cure the intrusion of the proposed addition into the setback, they did somewhat alleviate the otherwise strict requirements of Code § 224-11. The Applicant also noted that the only other location on the lot where the addition could be placed contained a septic field that could not be eliminated or built on, and that because the property was quite far from a public sewer, it would be prohibitive to hook up to the municipal sewer system.

The Board found that the configuration and design of the proposed addition comports with the character of the improvements on nearby properties in the neighborhood.

After weighing the applicable factors, the Board concluded that the benefit to the Applicant from granting this variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, that the benefit sought could not feasibly be achieved by any method other than a variance, and that the requested variance, although not insubstantial, was outweighed by the other factors considered. Finally, the Board found that the requested variance would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variance was not self-created.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance to permit the construction of an addition to the front of the house in accordance with plans submitted at the hearing and made a part of the record therein.

2001-11 Delia and Gregory Smalter – 1 Osceola Avenue (Sheet 12A; Lots P94, P95)

Applicant appeared with his architect Earl Ferguson.

Applicant did not file with the Board the verified statement of compliance with the notice provisions of § 224-98(A) of the Irvington Zoning Code ("the Code").

However, Applicant stated that the required notifications were made in the requisite manner and that the proofs thereof were filed directly with the Village Clerk.

The Applicant sought a variance from the provisions of § 224-13 (coverage) of the Code, to permit the construction of a garage.

The Board reviewed plans and photographs submitted by the Applicant. The Chairman noted that he had visited the property, and that it does not presently have a garage. Mr. Ferguson stated that coverage on the Applicant's lot already exceeds the permitted maximum by approximately 2000 square feet, primarily because of existing patios, walkways and stone walls that constitute "coverage" as defined by the Code. The Applicant stated that he planned to remove an existing greenhouse on the property, constituting part of the present coverage, so that the addition of an 864 square foot garage would increase the coverage by a net amount of approximately 600 square feet.

The Board noted that the location of the proposed garage would not adversely affect adjoining property owners, since it is set well back from the property lines. The Board concluded that construction of the proposed garage would eliminate unsightly outdoor parking that presently exists on the Applicant's driveway.

After weighing the required factors, the Board concluded that the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, that the benefit sought could not feasibly be achieved by any method other than a variance, and that the requested variance did not materially increase the existing non-conforming coverage. Finally, the Board found that the

requested variance would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variance was not self-created.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request to permit construction of a garage in conformity with plans submitted at the hearing and made a part of the record therein.

2001-12 Mark Shedrofsky and Nancy Messing – 27 Hillside Terrace (Sheet 10D; Block 243; Lot 20)

The Applicants appeared with their architect Joseph Paiva.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Irvington Zoning Code (the "Code"), the Applicants filed the applicable proofs of service.

Applicants sought a variance from the provisions of § 224-11 of the Code to permit the construction of additions to the front and rear of their residence.

The Board reviewed plans submitted by the Applicant. The Chairman noted that he had visited the property.

The Board found that the proposed addition to the rear of the house would be screened from the rear neighbor by existing foliage. The Board also found that the proposed enclosure of the porch to the northern side of the front of the house abuts on

undeveloped land, and that even with the proposed additions, the structure of the house will not exceed the permitted coverage for the lot.

After weighing the required factors, the Board concluded that the benefit to the Applicants from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, that the benefit sought could not feasibly be achieved by any method other than a variance, and that the requested variance, although not insubstantial, was outweighed by the other factors considered. Finally, the Board found that the requested variance would not adversely affect the physical or environmental conditions of the neighborhood or district and that the hardship necessitating the request for the variance was not self-created.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request to permit the construction of additions to the front and rear of the Applicants' house in accordance with plans submitted at the hearing and made a part of the record therein.

2001-13 Bridge Street Properties – One Bridge Street (Sheet 3;
Lots P103, P102, P105, P4B and Sheet 7, Lot P89)

The Applicant appeared with its attorney John Kirkpatrick, Esq.

The Applicant did not file with the Board the verified statement of compliance with the notice provisions of § 224-98(A) of the Irvington Zoning Code ("the Code"). However, Applicant stated that the required notifications were made in the requisite manner and that the proofs thereof were filed directly with the Village Clerk.

The Applicant is the owner of two parcels on the west side of the Metro North railroad tracks and located between the Hudson River and the railroad tracks, and between Matthiessen Park on the north and Scenic Hudson Park on the south. The two parcels are divided by West Main Street, a public street. The parcel to the north of West Main Street (bordering Matthiessen Park) was referred to as the "North Parcel" and the parcel to the south of West Main Street (bordering Scenic Hudson Park) was referred to as the "South Parcel".

The Applicant stated that it plans to construct a 27,000 square foot office building on the South Parcel. The Applicant further stated that it would require certain variances and/or favorable definitions of the term "lot" for zoning purposes, to satisfy the parking requirements of the Code in connection with its proposed construction.

Applicant sought (i) an interpretation of the definition of the term "lot" contained in § 224-3 of the Code to allow the two non-contiguous parcels it owns, separated by West Main Street and denominated as two separate tax lots, to be considered as a single lot for zoning purposes; or (ii) a variance to allow parking on the North Parcel to be used to satisfy the parking requirements for the proposed new building on the South Parcel; and (iii) a variance from the definition of the term "parking space" contained in § 224-3 of the Code to permit parking spaces that measure 8.5 feet x 18 feet instead of the required 9.5 feet by 20 feet.

The Board reviewed plans submitted by the Applicant, an engineering report prepared for the Applicant by Paul J. Petretti, P.E.L.S, a letter prepared by Peter C. Lilienfeld, Chairman of the Irvington Planning Board, and a proposed parking declaration which would require Applicant and any subsequent owner of the North Parcel to permit the North Parcel to be used to provide parking for the South Parcel.

Mr. Kirkpatrick contended that a “lot” for zoning purposes need not be a single tax lot or a single building lot. He noted that the Code’s definition of “lot” does not require that the property be described as a single tax lot, and he urged the Board to interpret the term “lot” to mean both the North Parcel and the South Parcel. Mr. Kirkpatrick further contended that if the Board declined to interpret “lot” in the manner suggested by the Applicant, the Applicant could execute a parking declaration that would run with the land and would bind the owner of the North Parcel to permit the North Parcel to be used for parking for the South Parcel. The Applicant contended that such an agreement could allow the Board to grant a variance permitting parking on the North Parcel to be applied towards the parking requirements for the South Parcel.

The Chairman and other members of the Board questioned the Applicant about the enforceability of such a parking declaration. The Board also requested the Applicant to provide further detail about its planned construction and proposed parking facilities. The Chairman also noted that the Village Attorney should approve any parking declaration proposed by the Applicant.

The Board did not render any interpretation or vote on any aspect of the application. Instead, the application was adjourned for further proceedings and for the

Applicant to make additional submissions, both factual and legal, for the Board's consideration.

There being no further business, the meeting was, upon motion duly made and seconded, unanimously adjourned.

/s/ Paul M. Giddins
Paul M. Giddins